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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,964	04/17/2000	Peter R Wurman	UOM0182PUS	1817
22045	7590	11/05/2003	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			PATEL, JAGDISH	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/550,964

Applicant(s)

WURMAN ET AL.

Examiner

JAGDISH N PATEL

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC §101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

2. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The invention as recited in the claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

Although, the claim recites step (a) as receiving "bids for the item.." at a computer site, it fails to recite that the critical limitations (b), (c), (f) and (h) are performed by a server at the computer site. Furthermore, broad interpretation of step (a) is that the bids are merely (manually) entered at the computer site since no communication of bids data from the bidders' computers is recited.

Steps (b), (c), (f), (h) (calculating..) are broadly interpreted as being performed manually and none of the data communication steps (d)-(e), (g)-(i) have any recitation of technology such communication network.

The examiner suggests that steps (b), (c), (f), (h) (calculating..) be clearly recited as being performed by auction computer or server at the computer site as disclosed in Fig. 1 and auction

data communication be clearly recited from the computer/server to the bidders in order to particularly point out the invention. This would also clearly point out the invention and resolve deficiencies outlined under 35 USC §112 (second paragraph).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(claim 1 is discussed as example. Claims 2-9 also inherit same deficiencies)

Claim 1: (b) “calculating ..” does not relate to limitation (a) “receiving at a computer site..from a plurality of bidders..” because step (b) does not clearly recite that the calculating is also performed at the computer site (or by the computer). Furthermore, step (b) also fails to indicate “bidders” as “the plurality of bidders” to relate to “bidders” of step (a).

The above deficiencies render the claim indefinite because it does not clearly recite:

(i) that the calculating step relate to the bidders from whom the bids are received at the computer site in step (a),

(ii) that the calculations of steps (b)-(c) and (f)-(g) are not being performed by the computer site even if the bids are received thereat. It is unclear why the bids are received at the computer site if *it* does process the bids and subsequently communicate the auction results (interim allocation and interim winning prices) to the bidders.

5. By not clearly stating the aforementioned steps being performed by the computer site the claims are rendered indefinite because the claims fail to recite any functionality of the computer site itself.

It is suggested that the claim be amended to particularly point out the method steps of calculations which are performed by the computer site and that a proper antecedent be provided for the term "bidders" throughout the claim (steps (a)- (g)).

It is also suggested that limitation (e) be amended as follows:

(e) receiving upwardly-revised bids from the bidders at the computer site in response to step (d);

Note: The computer system claim 10 recite the aforementioned method steps and therefor contain similar deficiencies. Claims 11-18 depend upon claim 10 and therefore inherit same deficiencies.

Allowable Subject Matter

6. Claims 1-18 are allowed over prior art contingent upon successful resolution of 101 and 112(second) rejections as discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagdish Patel whose telephone number is (703) 308-7837. The examiner can normally be reached Monday-Thursday from 8:00 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1038. The fax number for Formal or Official faxes to Technology Center 3600 is (703) 305-7687. Draft faxes may be submitted directly to the examiner at (703) 746-5563.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113 or 308-1114. Address for hand delivery is 2451 Crystal Drive, Crystal Park 5, 7th Floor, Alexandria VA 22202.



Jagdish N. Patel

(Examiner, AU 3624)

11/3/03